

ERNEST A. SCHAAF
E. WAYNE SCHAAF

IBLA 94-226

Decided January 29, 1997

Appeal from decisions of the Colorado State Office, Bureau of Land Management, declaring two lode mining claims and a mill site claim abandoned and void. CMC-119240, CMC-119241, and CMC-182405.

Affirmed.

1. Mining Claims: Abandonment--Mining Claims: Rental or Claim Maintenance Fees: Generally

BLM properly declares an unpatented mining or mill site claim abandoned and void when the owner, having failed to obtain an exemption from payment, failed to pay \$200 in rental fees on or before August 31, 1993, as required by the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993, P.L. 102-381, 106 Stat. 1378-79 (1992). Neither the claimant's lack of actual knowledge of the statutory requirement nor BLM's failure to give personal notice to him of that requirement excuses the claimant's failure to comply with the rental fee requirement, since all persons dealing with the Federal Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

APPEARANCES: Ernest A. Schaaf and E. Wayne Schaaf, pro sese; Lowell L. Madsen, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Ernest A. and E. Wayne Schaaf have appealed from two decisions of the Colorado State Office, Bureau of Land Management (BLM), dated November 8, and 15, 1993, which declared the Silver Star Lode lode mining claim and the Lost Lode Mill Site mill site claim, CMC-119240 and CMC-119241, and the Silver Star Extension lode mining claim CMC-182405, abandoned and void for failing to pay \$200 in rental fees or file certificates of exemption from payment for each claim, as required by the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993 (Appropriations Act), P.L. 102-381, 106 Stat. 1378-79 (1992), and its implementing regulations.

[1] The Appropriations Act, enacted on October 5, 1992, provided, in pertinent part, that:

[F]or each unpatented mining claim, mill or tunnel site on [F]ederally owned lands, in lieu of the assessment work requirements contained in the Mining Law of 1872 (30 U.S.C. 28-28e), and the filing requirements contained in section 314(a) and (c) of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1744 (a) and (c)), each claimant shall, except as provided otherwise by this Act, pay a claim rental fee of \$100 to the Secretary of the Interior or his designee on or before August 31, 1993[,] in order for the claimant to hold such unpatented mining claim, mill or tunnel site for the assessment year ending at noon on September 1, 1993[.]

106 Stat. 1378 (1992). The Act also contained an identical provision establishing rental fees for the following assessment year ending at noon on September 1, 1994, which required payment of an additional \$100 rental fee for each claim on or before August 31, 1993. 106 Stat. 1378-79 (1992).

Implementing Departmental regulations provided, in pertinent part, as follows:

Mining claim or site located on or before October 5, 1992. A nonrefundable rental fee of \$100.00 for each mining claim, mill site, or tunnel site, shall be paid on or before August 31, 1993, for each of the assessment years beginning on September 1, 1992, and September 1, 1993, or a combined rental fee of \$200.

43 CFR 3833.1-5(b) (1993).

The only exception provided from this rental fee requirement was the "small miner" exemption, available to claimants holding 10 or fewer claims on Federal lands, who also satisfied the other requirements of the statute (106 Stat. 1378, 1378-79 (1992)) and its implementing regulations (43 CFR 3833.1-6 and 3833.1-7 (1993)). Ronald E. Milar, 133 IBLA 214, 217 (1995). Under those regulations, in order to obtain an exemption, a claimant must first have submitted, on or before August 31, 1993, a certificate of exemption as to each claim and each assessment year for which he sought an exemption. 43 CFR 3833.1-7(b) and (d) (1993). Assuming he qualified for the exemption, he would have been permitted, rather than paying the rental fees, to perform the assessment work required by the mining law and satisfy the filing requirement of section 314(a) of FLPMA. 106 Stat. 1378 (1992); 43 CFR 3833.1-5(d) and 3833.1-6 (1993).

Finally, the Appropriations Act provided that "failure to make the annual payment of the claim rental fee as required by th[e] Act shall conclusively constitute an abandonment of the unpatented mining claim, mill or tunnel site by the claimant." 106 Stat. 1379 (1992); see also 43 CFR 3833.4(a)(2) (1993). Thus, when a claimant failed to properly obtain a small miner exemption from the rental fee requirement, the failure to pay

those fees in accordance with the Appropriations Act necessarily resulted in a conclusive presumption of abandonment. Chester Wittwer, 136 IBLA 96, 99 (1996), and cases cited therein.

Appellants do not assert that they submitted, on or before August 31, 1993, certificates of exemption, with respect to the two assessment years for each of the three claims to obtain an exemption from the statutory requirement to pay \$200 in rental fees for each claim. Nor do they assert that they paid the \$200 rental fees for each of the three claims on or before the statutory deadline of August 31, 1993. Indeed, a review of the record confirms that appellants did not pay rental fees in lieu of seeking an exemption. Even so, appellants justify their failure to comply by arguing that they did not know of the statutory payment requirement:

No notification was received informing us that the filing deadline had been changed from December 31 to August 31.

We did our assessment work in October between the 2nd and the 22nd, 1993. Due to the fact that the Durango and Silverton Narrow Gauge Railroad is our only way to get to the claims and their busy season is the summer, for the last several years, we have been doing our assessment work and filing in the fall after Labor Day. Assessment affidavits were filed on October 22, 1993
* * *.

It is obvious our intent is to keep the claims current by doing the assessment work and filing affidavits according to the only deadlines we knew. If we had been notified of the earlier deadline, we would have made arrangements to meet that deadline.

(Notice of Appeal, dated Dec. 9, 1993).

The Board has no authority to excuse the failure to comply with the statutory rental fee requirement, to extend the time for compliance, or to afford any relief from the statutory consequences. Chester Wittwer, 136 IBLA at 99. Thus, whether appellants were aware of the requirement of the Appropriations Act, or complied with the filing requirement of section 314(a) of FLPMA by submitting timely affidavits of assessment work, or in fact did not intend to abandon their claims are not issues relevant for consideration. See also Nannie Edwards, 130 IBLA 59, 60 (1994). It is well established that appellants, like other persons who deal with the Federal Government, are presumed to know of the requirements of relevant statutes and duly promulgated regulations of the Department. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380, 384-85 (1947); Lester W. Pullen, 131 IBLA 271, 273 (1994). Thus, regardless of whether they received personal notice from BLM, they are presumed to have known that, absent an exemption from payment, they were required to pay \$200 in rental fees as to each of the subject claims on or before August 31, 1993. Carol E. Shaw, 136 IBLA 84, 88-89 (1996); Lester W. Pullen, 131 IBLA at 273.

In addition, we recognize that the record substantiates appellants' assertion that they filed an affidavit of assessment work performed during the 1993 assessment year as to the three claims prior to December 31, 1993. However, that filing, while made in accordance with section 314(a) of FLPMA, clearly did not satisfy the mandate of the Appropriations Act, which required appellants, absent properly obtaining an exemption, to pay \$200 rental fees for each claim on or before August 31, 1993. The Appropriations Act specifically stated that, absent an exemption, payment of rental fees was to be "in lieu of * * * the filing requirements contained in section 314(a) [of FLPMA]." 106 Stat. 1378, 1379 (1992); see Lanny Perry, 131 IBLA 1, 4 (1994); William B. Wray, 129 IBLA 173, 176 (1994). Thus, appellants cannot excuse their failure to satisfy the requirement of the Appropriations Act by relying on their section 314(a) filing. Lanny Perry, 131 IBLA at 4.

We, therefore, conclude that BLM, in its November 8, and 15, 1993, decisions, properly declared the Silver Star Lode lode mining claim, the Lost Lode Mill Site mill site claim, and the Silver Star Extension lode mining claim abandoned and void for failing to comply with the requirement of the Appropriations Act to pay, absent an exemption, \$200 rental fees for each claim.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Gail M. Frazier
Administrative Judge

I concur:

Will A. Irwin
Administrative Judge